BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LETICIA MERA-HERNANDEZ	)	
Claimant	)	
VS.	)	Docket No. 1,061,514
	)	
USD 233	)	
Self-Insured Respondent	)	

ORDER

Respondent appealed the May 14, 2014, Award entered by Administrative Law Judge (ALJ) Steven J. Howard. The Board heard oral argument on September 3, 2014.

APPEARANCES

C. Albert Herdoiza and Gary P. Kessler of Kansas City, Kansas, appeared for claimant. Kip A. Kubin of Leawood, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Respondent raises two issues on appeal. First, respondent contends the ALJ erred in finding that claimant was an employee of respondent at the time of claimant's accident. Respondent argues claimant fraudulently induced respondent to hire her, the employment contract is *void ab initio* and claimant should be denied compensation. With regard to that issue, the May 14, 2014, Award states, in part:

> 3. Respondent contends that each of these elements [to show fraud] is present under the factual situation presented herein, and as such the employment contract entered into between the Respondent and the claimant is void *ab initio* and hence claimant should not received *[sic]* benefits.
>
> . . .

5. Accordingly, and based upon the foregoing, since claimant was involved in a lawful activity, both parties benefitted from the relationship, and claimant was injured in the course of her employment based upon that relationship, she is entitled to receive workers compensation for any resulting impairment or disability.

6. Further, respondent would be estopped to deny the existence of this relationship where as *[sic]* here, claimant was employed on three separate occasions by the respondent utilizing the same name on each occasion. Further, respondent had independent investigation regarding the veracity of the information that claimant provided. To permit respondent to ignore the obligations under the Kansas Workers Compensation Act for payments to injured claimants, would violate the public policy of the State.[1]

Second, respondent contends the ALJ erred in determining claimant's average weekly wage by dividing claimant's wages by the wrong number of weeks. Respondent maintains claimant's average weekly wage is $478.59.[2] ALJ Howard found claimant's average weekly wage is $521.51[3] and he awarded claimant temporary total and permanent partial disability benefits based upon a 5% whole body functional impairment.

Claimant requests the Board affirm the May 14, 2014, Award.

The issues before the Board on this appeal are:

1. Was claimant an employee of respondent on the date of accident?

2. What is claimant's average weekly wage?

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

The facts concerning claimant's March 1, 2012, injury by accident and subsequent medical treatment are not germane to the issues in dispute and, therefore, have been purposefully omitted.

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[1] ALJ Award at 6-7.

[2] Respondent contends the $12,443.29 in wages should be divided by 26 weeks and, thus, claimant's average weekly wage is $478.59.

[3] The ALJ found claimant received $12,443.29 in wages for the period from September 15, 2011, to February 29, 2012, a period of 23.86 weeks. He then divided $12,443.29 by 23.86 weeks to find claimant's average weekly wage is $521.51.

Claimant's real name is Leticia Mera-Hernandez. On January 29, 2009, she completed and signed a job application with respondent using the name Hilda Reina and a Social Security number that was not hers, as she did not have a Social Security number. Claimant admitted the information was false.

Claimant was hired as a custodian by respondent in May 2009. She completed and signed a Form I-9 Employment Eligibility Verification on May 18, 2009, and provided the same name and Social Security number she listed on her application for employment. On the Form I-9 Employment Eligibility Verification, claimant indicated she was a permanent alien and listed a resident alien number. Claimant admitted that when she completed the form, she did not have a resident alien number.

Claimant's July 11, 2012, Application for Hearing indicated her name was Leticia Mera-Hernandez a/k/a Hilda Reina. At the time, claimant had no Social Security number.

Following the preliminary hearing, an Order was issued implying there was an employer-employee relationship between respondent and claimant. Respondent appealed and the Board affirmed there was an employer-employee relationship between respondent and claimant.

At her deposition, claimant testified she previously worked for respondent in 2000 as a custodian for almost a year. She applied for the job using her real name, but eventually quit because she was having a baby. Claimant indicated that in 2003 or 2004, she again used her real name to apply for a job with respondent as a custodian and was hired. She worked for respondent almost two years. Claimant testified she left her employment with respondent then because respondent found there were too many illegal workers. Claimant testified she received a letter that she had to leave.

Claimant indicated when she applied for her job in 2009, she did not disguise her face and was not trying to "hoodwink"[4] respondent. Claimant admitted she applied for work with respondent under the name Hilda Reina because she did not have a Social Security number and if she used her real name, she would not be hired by respondent. Claimant admitted she received her paychecks and temporary total disability checks in the name of Hilda Reina. Dr. Alexander S. Bailey evaluated claimant. His medical records indicated claimant's name was Hilda Reina.

After claimant received medical treatment and was released, respondent offered claimant work as a custodian, which she attempted. When she sought additional medical treatment, respondent refused. Claimant then sought legal representation and filed an Application for Hearing. According to claimant, that was when respondent first alleged she obtained her employment through fraudulent misrepresentation.

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[4] Claimant Depo. at 14-15.

Claimant testified she applied in February 2013 for permission to work in the United States. A copy of her employment authorization card was introduced, showing she was eligible to work in the United States from December 24, 2013, through December 23, 2014.

Teresa J. Suddreth, director of employee services for respondent, testified she was responsible for the payroll. She testified she was not familiar with claimant. Ms. Suddreth indicated claimant was paid bimonthly and her first pay period 26 weeks prior to her accident commenced on September 1, 2011. The payroll records of Hilda Reina from September 1, 2011, through February 29, 2012, indicated gross earnings of $12,443.29.

Ms. Suddreth testified respondent employed an individual by the name of Leticia Hernandez from October 9, 2000, through June 30, 2001, and November 16, 2003, through June 30, 2005. Ms. Suddreth indicated employees are required to wear name badges displaying the employee's photograph. Claimant introduced two name badges as exhibits. One name badge for 2003-2004 had the name Leticia Hernandez and a second badge for 2011-2012 had the name Hilda Reina. Both badges had photographs of the employee, but Ms. Suddreth could not determine if the photographs were of the same person. Claimant's personnel records were introduced for all three periods of time she worked for respondent.

Harry Rodriguez, assistant director of facilities, testified he hires, terminates and trains custodial and maintenance staff for respondent. He indicated that he reviews applications of potential employees and if they look like a good candidate, interviews them. He testified he interviewed claimant. If an applicant is offered a job, he or she must complete a Form I-9 Employment Eligibility Verification. Mr. Rodriguez testified claimant indicated on the Form I-9 that she was a lawful permanent resident and her name was Hilda Reina. Mr. Rodriguez also testified respondent, since at least 2008, uses a service that conducts background checks on potential employees. Mr. Rodriguez did not recognize claimant from the photograph on her 2000-2001 employee badge.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the Board already decided there was an employee-employer relationship between her and respondent and, therefore, that issue is moot. That argument is without merit as the November 9, 2012, Order was issued by a single Board Member and resulted from an appeal of a preliminary hearing Order.

Claimant also contends she used her real name while employed by respondent on two prior occasions and respondent was aware of her illegal status and hired her anyway. The Board finds there is insufficient evidence in the record to find respondent knew Hilda Reina and Leticia Mera-Hernandez were the same person. Mr. Rodriguez was the only employee of respondent who testified who may have had contact with claimant during the three periods she worked for respondent. However, he was never asked if he knew Hilda Reina and claimant were the same person.

The Board and Kansas appellate courts have addressed the issue of whether an undocumented worker is entitled to work disability benefits in workers compensation claims. In *Dominquez*,[5] the Kansas Court of Appeals held:

> K.S.A. 2008 Supp. 44-508(b) broadly defines the term employee without exempting undocumented workers. Moreover, we have found no reference to immigration status within the entire Workers Compensation Act. Under the legislative scheme that is presented, [we] must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it. *Bergstrom*, 289 Kan. at 607-08. Accordingly, we hold that the Board did not err in its determination that Dominquez is entitled to permanent partial benefits based on work disability.

The Kansas Supreme Court tackled this issue in *Fernandez*.[6] Fernandez, an undocumented worker, was injured at McDonald's. The Division of Workers Compensation discovered the Social Security number used by Fernandez that was included on the accident report submitted by McDonald's was invalid. A majority of the Board concluded the Act's plain language did not prohibit an unauthorized alien from receiving an award for work disability. The Board majority concluded Fernandez was entitled to the full measure of work disability described in K.S.A. 44-510e.

The Kansas Supreme Court in *Fernandez* affirmed the Board, citing *Bergstrom*,[7] which in part states:

> When a workers compensation statute is plain and unambiguous, this court must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it.

In *Fernandez*, the Kansas Supreme Court noted K.S.A. 44-510e did not specifically provide that Fernandez' immigration status prevented her from receiving work disability. The Kansas Supreme Court examined the remainder of the Kansas Workers Compensation Act to determine if there was statutory authority for Fernandez to be denied work disability. The court examined K.S.A. 44-510g, 44-501, 44-505, 44-506 and 44-508 and concluded that none of those statutes contained language that prohibited an unauthorized alien from receiving work disability benefits.

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[5] *Dominquez v. Gottschalk Brothers Roofing*, No. 105,985, 2012 WL 2715618 (unpublished Kansas Court of Appeals opinion filed June 29, 2012).

[6] *Fernandez v. McDonald's*, 296 Kan. 472, 292 P.3d 311 (2013).

[7] *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607-08, 214 P.3d 676 (2009).

Fernandez and *Dominquez* dealt with the limited issue of whether an undocumented injured worker is entitled to work disability. It is important to note the foregoing cases were claims involving work injuries that occurred prior to the May 15, 2011, amendments to the Kansas Workers Compensation Act. The Kansas Supreme Court was keenly aware of this when it stated in *Fernandez*:[8]

> Before concluding, we pause to acknowledge that the legislature made changes to K.S.A. 44-510e in 2011 that require a work disability claimant to prove that he or she has a postinjury wage loss by showing that the person has the legal capacity to enter into a valid employment contract. See L. 2011, ch. 55, sec. 9. But the parties have not argued how those statutory changes may have impacted this case, and we decline to do so on our own.

K.S.A. 44-501 and 44-510e were substantially amended by the Kansas Legislature in 2011. K.S.A. 2011 Supp. 44-510e(a)(2)(E)(i) provides that in order for a claimant to establish post-injury wage loss, he or she must have the legal capacity to enter into a valid contract of employment. That provision did not exist in K.S.A. 44-510e prior to May 15, 2011. However, K.S.A. 2011 Supp. 44-510e(a)(2)(E)(i) does not state an undocumented worker is prohibited from receiving any workers compensation benefits, merely that a worker must have the capacity to enter into a valid employment contract.

K.S.A. 2011 Supp. 44-501 contains no language concerning undocumented workers or workers who do not have the legal capacity to enter into an employment contract. The Kansas Legislature did not amend K.S.A. 44-505, 44-506 or 44-510g in 2011. The Kansas Supreme Court in *Fernandez* concluded K.S.A. 44-505 and 44-506 enumerate specific types of employment relationships that are excluded under the Act, but conspicuously absent from those exclusionary provisions is any mention of unauthorized aliens. The court also concluded K.S.A. 44-510g does not preclude an undocumented worker from receiving work disability benefits.

The definition of an employee was not amended in 2011. K.S.A. 2011 Supp. 44-508(b) states:

> "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (d) [(f)] of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (b) [(d)] of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only

[8] *Fernandez*, 296 Kan. at 481.

> to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed [an election] to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

In *Fernandez*,[9] the Kansas Supreme Court stated:

> Next, we look at how the legislature defines "employee" under the Act. K.S.A. 2007 Supp. 44-508(b) defines the term, in part, to be "*any* person who has entered into the employment of or works under any contract of service or apprenticeship with an employer." (Emphasis added.) Pointedly, the definition of "employee" does not require that the employment, contract of service, or apprenticeship involve a legal relationship or that the persons involved possess the requisite documentation to legally work within the United States. Additionally, the provision continues by reciting a nonexclusive list of positions and persons that are deemed to be employees under the Act. Interestingly, that list includes "minors, whether such minors are legally *or illegally employed*." (Emphasis added.) . . . .

The Board, applying *Bergstrom*, as did the Kansas Supreme Court in *Fernandez*, can find no express and unambiguous language in the Kansas Workers Compensation Act that precludes an undocumented worker from receiving workers compensation benefits, with the possible exception of K.S.A. 2011 Supp. 44-510e(a)(2)(E)(i). Application of that subsection is not at issue in this case.

The Board is also cognizant of K.S.A. 2011 Supp. 44-501b, which states in part:

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[9] *Fernandez*, 296 Kan. at 480.

> (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.
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> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

In *Coma*,[10] Corral, an undocumented worker, was employed by Coma. After being terminated by Coma, Corral filed a claim for earned, but unpaid wages. The Kansas Supreme Court held that under the facts of the case, the undocumented worker's employment contract was enforceable under the Kansas Wage Payment Act. The Kansas Supreme Court indicated the work itself performed by the employee was lawful and legitimate and indicated that Kansas workers compensation case law provided some guidance, stating:

> Although Kansas appellate courts have not examined this exact issue in the area of wages, our workers compensation case law does provide some guidance. Just as the district court in the instant case looked to Corral's employment contract for determining wages, this court has held that in the workers compensation area, "[t]he liability of an employer to an injured employee arises out of contract between them, and the terms of a statute are embodied in that contract." *Lyon v. Wilson*, 201 Kan. 768, 774, 443 P.2d 314 (1968) (cited in *Jurado v. Popejoy Constr. Co.*, 253 Kan. 116, 122, 853 P.2d 669 [1993]). And Kansas has allowed undocumented workers, *i.e.*, those with purported illegal contracts of employment, to receive workers compensation benefits under those contracts. See *In re Doe*, 277 Kan. 795, 803-04, 807, 90 P.3d 940 (2004).[11]

Respondent's chief argument is that no contract for employment existed on the date of accident because claimant used a false name to fraudulently induce respondent into entering a contract for employment. Because the employment contract was fraudulently induced, respondent asserts the employment contract is *void ab initio*. At oral argument, respondent asserted claimant's legal status is irrelevant. Respondent contends that if claimant was a United States citizen, but provided respondent with a false name and Social Security number, the employment contract would still be *void ab initio.*

Larson's Workers' Compensation Law (2014) devotes an entire chapter to illegal employments. At § 66.01, Larson's distinguishes between contracts that are illegal in the

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[10] *Coma Corporation v. Kansas Dept. of Labor*, 283 Kan. 625, 154 P.3d 1080 (2007).

[11] *Id.* at 643.

sense the contract itself violated a prohibition and contracts that call for the performance of an illegal act. Larson's, at § 66.04, discusses the effects of making a false statement at hiring. That section notes employment obtained by false statements is still employment and the technical illegality will not itself destroy workers compensation coverage.

At § 66.04, Larson's sets forth three factors that must be present before a false statement given at the time of hiring bars workers compensation benefits. One of the three factors is there must be a causal connection between the false representation and the injury. The fact claimant was an undocumented worker who gave a false name and Social Security number has little causal connection to claimant's injury. Claimant's false statement did not increase her likelihood of being injured. Nor did respondent pay more benefits to claimant than a legal worker.

Respondent cites *Waxse*,[12] wherein the Kansas Supreme Court set out the elements necessary to prove fraud and stated, in part:

> The elements necessary to establish actionable fraud are well established. Fraudulent misrepresentation in an action to rescind an insurance contract includes an untrue statement of fact, known to be untrue by the party making it, made with the intent to deceive or recklessly made with disregard for the truth, where another party justifiably relies on the statement and acts to his injury and detriment. *American States Ins. Co. v. Ehrlich,* 237 Kan. 449, 452, 701 P.2d 676 (1985); *Nordstrom v. Miller*, 227 Kan. at 65. Fraud is never presumed and must be shown by clear and convincing evidence. *Gonzalez v. Allstate Ins. Co.,* 217 Kan. 262, 266, 535 P.2d 919 (1975).

In *Waxse,* the estate of Behnke filed suit against Reserve Life, because it failed to pay benefits under a medical insurance policy. Reserve Life argued it rescinded the contract because Behnke made material misrepresentations concerning his health on the insurance application. Behnke failed to disclose that he had tested positive for HIV, even though the application asked if he knew of any other impairment now existing in the health or physical condition of the proposed insured. The Kansas Supreme Court found there was no fraud because Behnke omitted the information of a positive HIV test in good faith, as it was not specifically inquired about.

Respondent also cites *Chute*[13] in support of its premise that where there is fraud in the inducement of a contract, the contract is *void ab initio*. In *Chute*, the Carpenters induced Upshaw to apply for two life insurance policies and name the Carpenters as beneficiaries. Upshaw was murdered and the Carpenters were convicted of second-

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[12] *Waxse v. Reserve Life Ins. Co.*, 248 Kan. 582, 586, 809 P.2d 533 (1991).

[13] *Chute v. Old American Ins. Co.*, 6 Kan. App. 2d 412, 629 P.2d 734 (1981).

degree murder. The estate of Upshaw sued to collect under the policies. The Court found for Old American, stating:

> From the foregoing, it appears to be a well-established rule of law that an insurer is relieved of all liability under a life insurance policy if it can be proved that the policy was procured by the beneficiary who intended at the time the insurance was secured to murder the insured. We see no reason why this rule should not be adopted in this state.[14]

Waxse and *Chute* are cases where fraud was used or alleged to have been used to induce a party to enter into an insurance contract, not an employment contract. *Chute* stands for the narrow rule that an insurer is relieved of all liability under a life insurance policy if it can be proved that the policy was procured by the beneficiary who intended at the time the insurance was secured to murder the insured.

Respondent also cites *Doe*,[15] where Butanda, an illegal immigrant, sought and obtained employment with National Beef using a false name and Social Security number and was later injured during the course of her employment. After Butanda filed a workers compensation claim using an assumed name and Social Security number, the Workers Compensation Division's Fraud and Abuse Unit received a referral from the Kansas Insurance Department indicating that Butanda was using a false name. A hearing officer concluded Butanda's intentional failure to disclose her identity and her use of an assumed name in an attempt to obtain benefits constituted a false and misleading statement in violation of K.S.A. 44-5,120(d)(4)(A) (1993 Furse), and the misrepresentation and concealment of her true identity were a misrepresentation and concealment of a material fact in violation of subsection 44-5,120(d)(4)(B). The Kansas Supreme Court concurred, stating:

> It must be emphasized again that K.S.A. 44-5,120(d) (1993 Furse) defines what "fraudulent or abusive acts or practices are *for purposes of the workers compensation act.*" The making of the false statements by Butanda in obtaining workers compensation benefits is *for purposes of the Act defined as fraudulent*. "The Workers Compensation Act is substantial, complete, and exclusive, covering every phase of the right to compensation and of the procedure for obtaining it." *Acosta*, 273 Kan. at 396. Thus, an intent to deceive and damages normally associated with fraud, indicated by Butanda's authority, are not included in the statutory definition.[16]

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[14] *Id.* at 417.

[15] *In re Doe v. Kansas Department of Human Resources*, 277 Kan. 795, 90 P.3d 940 (2004).

[16] *Id.* at 802.

Doe, however, does not directly involve the determination of a claim for workers compensation benefits. Rather, it was an administrative action to determine if Butanda had committed fraud and abuse. While the Kansas Supreme Court determined Butanda's actions constituted fraud and abuse, the court did not find Butanda was precluded from receiving workers compensation benefits. Moreover, the Kansas Supreme Court in *Doe* also stated: "Thus, making false statements by lying under oath in workers compensation proceedings are abusive **notwithstanding Butanda's legal entitlement to the benefits obtained**."[17]

Pattern Instructions for Kansas (PIK Civ.4th) 127.40 sets out the essential elements for actual fraud as follows:

> 1. That false (*or untrue*) representations were made as a statement of existing and material fact.
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> 2. That the representations were known to be false (*or untrue*) by the party making them, or were recklessly made without knowledge concerning them.
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> 3. That the representations were intentionally made for the purpose of inducing another party to act upon them.
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> 4. That the other party reasonably relied and acted upon the representations made.
>
> 5. That the other party sustained damage by relying upon them.
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> A representation is material when it relates to some matter as to influence the party to whom it was made.

Respondent presented insufficient evidence that relying on claimant's representations that she was Hilda Reina resulted in respondent sustaining damages, injury or detriment. If a resident worker was injured while working for respondent, rather than claimant, respondent would have been responsible for providing that worker with medical treatment and other benefits due under the Kansas Workers Compensation Act. The fact that claimant used a false name to obtain employment with respondent did not, in and of itself, result in respondent sustaining damages or cause respondent detriment.

Claimant is an employee who provided labor for respondent, an employer, in return for wages. Her illegal or undocumented status did not make the contract for employment between claimant and respondent *void ab initio*. Both parties benefitted from the employment relationship. The Board cannot find any statutory authority in the Act, nor any Kansas case, precluding a worker who suffers a work-related compensable injury from receiving workers compensation benefits because he or she provided his or her employer

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[17] *Id.* (emphasis added).

with a false name or Social Security number. The Board finds an employer-employee relationship existed between respondent and claimant.

Respondent asserts the ALJ incorrectly calculated claimant's average weekly wage. The Board agrees. The ALJ determined claimant earned $12,443.29 in wages for the period from September 15, 2011, to February 29, 2012, a period of 23.86 weeks. He then divided $12,443.29 by 23.86 weeks to find claimant's average weekly wage is $521.51.

K.S.A. 2011 Supp. 44-511(b)(1) states:

> Unless otherwise provided, the employee's average weekly wage for the purpose of computing any compensation benefits provided by the workers compensation act shall be the wages the employee earned during the calendar weeks employed by the employer, up to 26 calendar weeks immediately preceding the date of the injury, divided by the number of calendar weeks the employee actually worked, or by 26 as the case may be.

Claimant was paid on September 15, 2011, for the prior two-week period commencing September 1, 2011. September 1, 2011, through February 29, 2012, is 26 weeks. K.S.A. 2011 Supp. 44-511(b)(1) provides the average weekly wage shall be computed by averaging the injured worker's wages for the 26-week period prior to the date of injury. Claimant earned $12,443.29 from September 1, 2011, through February 29, 2012, a period of 26 weeks. That calculates to an average weekly wage of $478.59.

CONCLUSION

1. Claimant was respondent's employee and, therefore, was entitled to the workers compensation benefits awarded by the ALJ.

2. Claimant's average weekly wage is $478.59.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.[18] Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board modifies the May 14, 2014, Award entered by ALJ Howard, as follows:

[18] K.S.A. 2013 Supp. 44-555c(j).

Leticia Mera-Hernandez is granted compensation from USD 233 for a March 1, 2012, injury by accident and resulting disability. Based upon an average weekly wage of $478.59, Ms. Mera-Hernandez is entitled to receive 12.14 weeks of temporary total disability benefits at the rate of $319.08 per week in the sum of $3,873.63, plus 20.75 weeks of permanent partial disability benefits at the rate of $319.08 per week in the sum of $6,620.91, for a 5% whole body functional impairment and a total award of $10,494.54, all of which is due and owing, less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October, 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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